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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANGEL MALDONADO,

Plaintiff,

-v-

A.M.K.C. C-95, BOB BARKER CO., CITY OF NEW
YORK, JOHN DOE #1 (Doctor #1), JANE DOE #2 (Dep.
Montana),

Defendants.
-----X

15 Civ. 7692 (PAE) (JCF)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

Pro se plaintiff Angel Maldonado brings this action under 42 U.S.C. § 1983, alleging that the mattress he was issued while incarcerated caused him severe pain. Before the Court is the October 31, 2016 Report and Recommendation of the Hon. James C. Francis, United States Magistrate Judge, recommending that the Court dismiss this action with prejudice. Dkt. 14 ("Report"). For the following reasons, the Court adopts that recommendation.

I. Background

The Court incorporates by reference the summary of the facts provided in the Report. *See* Report at 1.

On September 29, 2015, Maldonado filed a Complaint. Dkt. 2. On October 20, 2016, Judge Preska issued an Order to Amend, directing Maldonado to file an Amended Complaint within 60 days and setting forth the legal standards that such a complaint must satisfy. Dkt. 5. On November 13, 2015, Maldonado filed an Amended Complaint. Dkt. 7.

On May 3, 2016, the Court accepted this case as related to others before it, and referred it to Judge Francis for general pretrial supervision and for a report and recommendation. Dkts. 8,

9. On May 4, 2016, the Court issued an order dismissing Maldonado's claims against several defendants. Dkt. 10. On September 29, 2016, nearly three months after the New York City Law Department had identified the remaining John and Jane Doe defendants and nearly two months after the deadline Judge Francis had set for the filing of a Second Amended Complaint naming the previously unnamed defendants, Judge Francis issued an Order to Amend, again directing Maldonado to file a Second Amended Complaint, identifying the unnamed defendants, by October 21, 2015. Dkt. 13. The order notified Maldonado that failure to comply would result in dismissal for failure to prosecute and failure to comply with a court order. To date, Maldonado has not filed a Second Amended Complaint.

On October 31, 2016, Judge Francis issued the Report, recommending that the Court dismiss the Complaint with prejudice. Objections were due by November 14, 2016. *See* Dkt. 14. To date, the Court has received no objections.

II. Discussion

In reviewing a Report and Recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009)); *see also, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

As neither party has submitted objections to the Report, review for clear error is appropriate. Because the Report explicitly states that "[f]ailure to file timely objections will

preclude appellate review,” Report at 7, both parties’ failure to object operates as a waiver of appellate review. *See Caidor v. Onondaga Cty.*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec’y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).

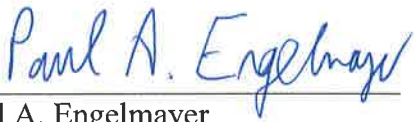
Careful review of Judge Francis’s thorough and well-reasoned Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. As Maldonado has had ample opportunity to amend his Amended Complaint, and has been given fair warning of the result of his failure to do so, the Court agrees with Judge Francis that this dismissal shall be with prejudice.

CONCLUSION

For the foregoing reasons, the Court dismisses Maldonado’s Amended Complaint with prejudice. The Clerk of Court is directed to close this case.

The Court directs the Clerk to mail a copy of this decision to plaintiff at the address on file.

SO ORDERED.


Paul A. Engelmayer
United States District Judge

Dated: December 5, 2016
New York, New York